UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
COOK, TELLITOCCI, and HAIGHT
Appellate Military Judges

UNITED STATES, Appellee
v.
Staff Sergeant IAN W. CURTIS
United States Army, Appellant

ARMY 20130289

Headquarters, Eighth Army
Wendy P. Daknis, Military Judge
Colonel Marian Amrein, Staff Judge Advocate

For Appellant: Colonel Kevin Boyle, JA; Major Vincent T. Shuler, JA; Captain Michael J. Millios, JA (on brief).

For Appellee: Colonel John P. Carrell, JA; Lieutenant Colonel James L. Varley, JA; Major John K. Choike, JA; Lieutenant Colonel John C. Lynch, JA (on brief).

20 April 2015

SUMMARY DISPOSITION

HAIGHT, Judge:

A military judge sitting as a general court-martial convicted appellant, pursuant to his plea, of one specification of making a false official statement in violation of Article 107, Uniform Code of Military Justice, 10 U.S.C. § 907 [hereinafter UCMJ]. A panel composed of officer and enlisted members convicted appellant, contrary to his pleas, of larceny and making a fraudulent claim against the United States, in violation of Articles 121 and 132, UCMJ.[*] The panel sentenced appellant to a bad-conduct discharge and reduction to the grade of E-1. The convening authority approved the sentence as adjudged.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises one assignment of error that merits discussion and relief. Appellant personally raises several matters pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), none of which merit discussion or relief.

[*] The panel acquitted appellant of two specifications of larceny.

Unreasonable Multiplication of Charges

Appellant claims charging and convicting appellant of larceny by means of a false official statement, making a false official statement, and making a false claim in the form of that same false official statement constitute an unreasonable multiplication of charges. We agree.

Appellant falsified a DA Form 5960, "Authorization to Start, Stop, or Change Basic Allowance for Quarters and/or Variable Housing Allowance," signed it, presented it, and thereby illegally obtained a greater housing allowance than to which he was entitled. He pleaded guilty to making a false official statement in Yongsan, Korea, on 11 July 2011. The charged false official statement was the DA Form 5960. Identically, he was also convicted of making a false claim at the same place at the same time. The charged false claim was the fraudulent DA Form 5960. Similarly, appellant was also convicted of stealing military property in the form of basic allowance for housing. This theft also occurred at Yongsan, Korea and was charged to have occurred between 11 July 2011 and 30 September 2012.

"What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person." Rule for Courts-Martial 307(c)(4). The prohibition against unreasonable multiplication of charges "addresses those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001); *see also United States v. Campbell*, 71 M.J. 19, 23 (C.A.A.F. 2012). In *Quiroz*, our superior court listed five factors to guide our analysis of whether charges have been unreasonably multiplied:

> (1) Did the accused object at trial that there was an unreasonable multiplication of charges and/or specifications?;
>
> (2) Is each charge and specification aimed at distinctly separate criminal acts?;
>
> (3) Does the number of charges and specifications misrepresent or exaggerate the appellant's criminality?;
>
> (4) Does the number of charges and specifications [unreasonably] increase the appellant's punitive exposure?; and
>
> (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?

55 M.J. 338-39 (internal quotation marks and citation omitted).

We find appellant's larceny is separate and distinct from making the false official statement and false claim. However, we find the false official statement specification and the false claim specification are aimed at the same criminal act. Both specifications address not only the same document but allege the very same lie contained therein (claiming a woman not appellant's wife as his wife). We find this multiplication of charges to be unreasonable and will accordingly set aside the finding of guilty to the false official statement charge.

CONCLUSION

The findings of guilty of Charge I and its Specification are set aside. The remaining findings of guilty are AFFIRMED.

We are able to reassess the sentence on the basis of the error noted and do so after conducting a thorough analysis of the totality of circumstances presented by appellant's case and in accordance with the principles articulated by our superior court in *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013) and *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986). There is no dramatic change in the penalty landscape and exposure as the military judge granted a defense motion to consider the false official statement and false claim as one offense for sentencing and instructed the panel accordingly. As we have determined the two charges were aimed at the same criminal act, we likewise conclude the nature of the remaining false claim offense still captures the gravamen of criminal conduct included within the original offense of false official statement. We AFFIRM the approved sentence. This reassessed sentence is not only purged of any error but is also appropriate. All rights, privileges, and property of which appellant has been deprived by virtue of that portion of the findings set aside by this decision are ordered restored.

Senior Judge COOK and Judge TELLITOCCI concur.

FOR THE COURT:

MALCOLM H. SQUIRES, JR.
Clerk of Court